IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2640 of 2007

Smt. Vibhuti Vilas Jadhav & anr. Applicants
Vs.
The State of Maharashtra & ors. Respondents

Mr.Majeed Memon with Mr.R.V.Bansode for applicants.

Mr.Shrish Gupte and Mr.Ashok Mundargi, Senior Counsel
with Mr.Ganesh Gole for resp.nos.2 to 7.

Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 24, 2007.

P.C.

1. Heard Mr.Memon with Mr.Bansode, the learned counsel for the applicants and Mr.Gupte and Mr. Mundargi, the learned Senior Counsel for the respondent nos.2 to 7. Mr.Shitole, the learned APP appears for the State. In obedience of the order passed on 10/8/2007, the learned II Ad-hoc Addl. District Judge and Addl. Sessions Judge at Thane vide his letter dated 20/8/2007 has sent the report of the cases (both jail as well as bail) and decided as well as pending cases from January 2006 till 10th August 2007 before the IIIrd Ad-hoc Addl. Sessions Judge before which Court the subject case i.e.

Sessions Case No.40 of 2006 is pending.

2. In the order dated 10/8/2007 the three main grounds raised in support of this transfer application filed under Section 407 of Cr.P.C. were noted as under :

(a) the track record of the main accused Shri Vijay Chougule and more particularly his alleged involvement in series of serious offences and the fact that he was never taken in custody by the I.O.,

(b) the order passed by this Court in Criminal Writ Petition No.999 of 2005 on 18/10/2006 granting liberty to the petitioners to apply for fresh investigations to be directed by the trial court and

(c) inspite of pendency of other old Sessions Cases right from 2001 onwards and in which the accused or some of them have not been granted bail have been kept pending and Sessions Case No.40 of 2006 is sought to be transferred and in which all the accused are on bail is being

conducted by the trial court on day to day basis and on priority and that too without any directions to this effect from any higher Court.

3. The report submitted by the Court below consists of four different lists. The first list is of the cases (jail as well as bail) decided from January 2006 to 10th August 2007 and in all 64 cases have been decided. The second list is of pending cases for trial of the under trial prisoners and they are 50 in number. These cases are at different stages like framing of charge, hearing, report awaited, part heard and judgment etc. In this list there is one case which is prior in time to Sessions Case No.40 of 2006 and i.e. Sessions Case No.112 of 2005. The report states that in the said case final arguments are over and it is reserved for judgment. The third list is of the pending cases of accused who are on bail from June 2006 to June 2007 and they are in all 256 and the fourth list is of the accused who are absconding and, therefore, the sessions cases are kept in dormant file. These are 28 in number. It is to be noted that the list nos.3 and 4 hereinabove are not relevant for the consideration of the present

transfer application and list nos.1 and 2 do not support the contentions that Sessions Case No.40 of 2006 is being decided on priority basis keeping behind the older cases in which the accused are in jail.

4. The petitioners had approached this Court in Criminal Writ Petition No.999 of 2005 and a Division Bench of this Court (Marlapalle & Dalvi,JJ.) while granting Rule on 23/2/2006, it was directed that in case the petitioners furnish the names of any additional relevant witnesses to the Court concerned within one week from that day, the statements of these additional witnesses will be recorded by the learned Magistrate and they shall be treated as annexures to the charge-sheet. When the petition came up for final hearing before another Division Bench (Patel and Dalvi,JJ.) on 18/10/2006 it was disposed off by granting certain liberty to the petitioners and, therefore, it would be relevant to reproduce para 4 of the said order:

> "In so far as the grievance of the petitioners is concerned, we grant them leave to apply to the trial court for seeking directions /

orders for carrying out further investigation pointing out the deficiencies in the investigation from the material on record and if such an application is made and the trial Court is satisfied that further investigation in the case is necessary, it may direct further investigations to be carried out and a supplementary charge sheet can be filed in the matter so that before the trial commences and no deficiency in the investigation remains as this will meet the ends of justice."

5. It is pertinent to note that when the Division Bench disposed off Writ Petition No.999 of 2005 on 18/10/2006, eight witnesses including Shri Milind Jadhav, brother of the deceased were examined before the trial Court. The said order passed by the Division Bench came to be challenged before the Apex Court but unsuccessfully and for the first time an application was submitted by the petitioners before the trial Court on 9/3/2007 praying for directions to the police to subject accused no.7 for brain mapping and when this application was presented, 18 witnesses were already examined. This application was rejected by the trial Court on 4/4/2007 and, therefore, the

petitioners approached in the second round before this Court in Writ Petition No.683 of 2007 praying for setting aside the order passed by the trial Court rejecting the said application. The learned Single Judge of this Court dismissed Writ Petition No.683 of 2007 on 3/5/2007 and the SLP challenging the said order was also dismissed by the Supreme Court on 17/5/2007.

6. It is also relevant to note that the subject case originating from C.R.No.239 of 2004 registered with Rabale Police Station, Navi Mumbai was committed after filing of the charge-sheet to the Court presided over by Shri Waghmare, 2nd Ad-hoc Addl. Sessions Judge and he framed charges on 4/4/2006. The present learned Judge was not associated with the case right from the time it was committed and registered. Special P.P. Smt.Phad came to be appointed by order dated 7/7/2006 and in Sessions Case No.40 of 2006 she came to be given charge on 8/9/2006.

7. The sequence of events shortly noted hereinabove do indicate that there was no undue haste or anxiety shown by the trial Court to fasten the

trial of Sessions Case No.40 of 2006 and it also must be noted that the said case came to be transferred from the Court presided over by Shri Waghmare to the Fast Track Court and the Fast Tract Court continued the trial further. The submissions that undue priority was given to the trial of Sessions Case No.40 of 2006 does not find support from the report submitted to this Court by the trial Court.

8. So far as the allegation that accused no.7 was not arrested by the police during the trial is concerned, the affidavit-in-reply filed by the said accused shows that he was released on anticipatory bail by this Court by its order dated 16/5/2005 while allowing Anticipatory Bail Application No.3329 of 2005.

9. Mr.Memon, the learned counsel appearing for the petitioners urged that despite the report received from the trial Court, it would be in the interest of justice that the case i.e. Sessions Case No.40 of 2006 is transferred from the Court presided over by Shri Shirwadkar to any other Court so that justice would be shown to have been done to the petitioners by erasing any doubts in their minds as of now. The powers of transfer under Section 407 of

Cr.P.C. are required to be invoked very sparingly and unless it is demonstrated that the ongoing trial suffers from some serious procedural irregularities or the Court concerned is shown to have been acting in an arbitrary manner, it would not be safe to invoke the said powers. The report submitted by the trial Court does not make out any case in support of this transfer application and, therefore, in my considered opinion, no case is made out to entertain this application.

10. Hence the same is hereby rejected and the ad-interim order dated 10th August 2007 stands vacated.

11. Before I part with this case I deem it appropriate to record my anguish on the following two issues:

(a) The first list sent by the trial Court states that 64 Sessions Cases have been decided from January 2006 to 10th August 2007 and only 11 of them have resulted in conviction. The rate of conviction is thus about 16 per cent and this causes concern to one and all. No doubt the Fast Track Courts are in place

for speedy disposal of the sessions cases and particularly wherein the accused are in jail, it must be ensured that the guilty are punished and they are not allowed to go scot free. It would be, therefore, necessary for the Director of Prosecution, State of Maharashtra to undertake the study of the 53 cases which have resulted in acquittals and make a report suggesting the steps to be taken so that no guilty person goes scot free and the alarmingly high rate of acquittals is checked / arrested.

(b) The third list is of pending cases in which the accused are on bail. There is no doubt that the Fast Track Courts are required to give priority to the Sessions trials wherein the accused are in jail but that does not mean that the cases are allowed to remain pending for any period between 8 years to 21 years. The list shows that the Sessions Cases right from 1986 are waiting trial. The Director of Prosecution, State of Maharashtra will have to, therefore, examine these cases and take appropriate steps so as to ensure that the trials of the cases which have been instituted prior to the year 2000 are completed expeditiously and preferably within one year. It is well recognised in law that the right to

speedy disposal is a fundamental right as enshrined under Article 21 of the Constitution.

12. The Director of Prosecution, State of Maharashtra is directed to submit his report on both these issues within a period of two months from today. The learned APP to communicate this order to the Director of Prosecution, State of Maharashtra forthwith.

(B.H.MARL